

048-329280-21

FILED
TARRANT COUNTY
9/24/2021 1:43 PM
THOMAS A. WILDER
DISTRICT CLERK

CAUSE NO. _____

THEODORE PARKER,
Plaintiff,

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

v.

____ DISTRICT COURT

JOHN DAMIAN RODRIGUEZ and
UNITED STATES POSTAL SERVICE,
Defendants.

TARRANT COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THEODORE PARKER, Plaintiff, and files this, his Original Petition complaining of Defendants, JOHN DAMIAN RODRIGUEZ AND UNITED STATES POSTAL SERVICE, and respectfully shows the Court the following:

I.

DISCOVERY CONTROL PLAN

Plaintiff seeks monetary relief over \$1,000,000.00, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees. Plaintiff intends to conduct Discovery in this case under Level 2 of the Texas Rules of Civil Procedure 190.3.

II.

JURISDICTION & VENUE

This Court maintains jurisdiction over Defendant because the torts at issue were committed in Texas. Pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(a)(2), venue is proper in TARRANT COUNTY, TEXAS because Defendant JOHN DAMIAN RODRIGUEZ was a resident in TARRANT COUNTY, TEXAS at the time the cause of action occurred.

III.

PARTIES

Plaintiff, THEODORE PARKER, is a resident of TARRANT COUNTY, TEXAS.

Defendant, JOHN DAMIAN RODRIGUEZ, resides in TARRANT COUNTY, TEXAS and can be served with process at 1841 Hillcrest Street, Fort Worth, Texas 76107 or wherever he may be found.

Defendant, UNITED STATES POSTAL SERVICE is an executive branch of the United States federal government and may be served with process by serving the United States Office of the Attorney General, Merrick B. Garland, at 950 Pennsylvania Avenue, NW, Washington, DC 20530.

IV.
BACKGROUND FACTS

This lawsuit is based on a motor vehicle collision that occurred on October 15, 2019, in TARRANT COUNTY, TEXAS. On the date of the accident, Plaintiff THEODORE PARKER was travelling eastbound on Westcreek Drive in TARRANT COUNTY, TEXAS. Defendant, JOHN DAMIAN RODRIGUEZ, while in the course and scope of his employment with Defendant UNITED STATES POSTAL SERVICE, was travelling northbound on Glenbrook Lane. Defendant, JOHN DAMIAN RODRIGUEZ, failed to yield the right of way to Plaintiff when attempting to make an unsafe u-turn and collided with Plaintiff's vehicle. As a result of Defendant JOHN DAMIAN RODRIGUEZ' negligence, Plaintiff suffered property damage and personal injuries. Plaintiff has incurred substantial medical bills and injuries as a result of the collision.

At the time of the collision, Defendant JOHN DAMIAN RODRIGUEZ was negligently and/or recklessly operating a vehicle that was owned/rented by Defendant UNITED STATES POSTAL SERVICE.

V.
CAUSES OF ACTION
NEGLIGENCE - DEFENDANT JOHN DAMIAN RODRIGUEZ

Plaintiff incorporates by reference the allegations contained in the foregoing paragraphs.

The collision and the resulting injuries and damages were proximately caused by the negligent conduct of Defendant JOHN DAMIAN RODRIGUEZ in one or more of the following respects:

- i. In failing to safely operate one's vehicle;
- ii. In driving while distracted;
- iii. In driving recklessly;
- iv. In failing to yield the right of way;

- v. In making an improper u-turn;
- vi. In failing to take evasive action; and
- vii. In failing to keep such a lookout as a person of ordinary prudence would have kept under the same or similar circumstances.

Each of the foregoing acts and omissions, either taken singularly or in combination with others constituted negligence and negligence per se, which proximately and directly caused the collision and Plaintiff's injuries and damages.

NEGLIGENT ENTRUSTMENT – UNITED STATES POSTAL SERVICE

On October 15, 2019, UNITED STATES POSTAL SERVICE owned the vehicle that was operated by Defendant JOHN DAMIAN RODRIGUEZ. Prior to and at the time in question, Defendant UNITED STATES POSTAL SERVICE entrusted the vehicle to Defendant JOHN DAMIAN RODRIGUEZ for the purpose of operating it on public streets and highways. Thereafter, Defendant JOHN DAMIAN RODRIGUEZ operated the vehicle with the knowledge, consent, and permission of Defendant UNITED STATES POSTAL SERVICE.

At such time, Defendant UNITED STATES POSTAL SERVICE knew or should have known that Defendant JOHN DAMIAN RODRIGUEZ was incompetent or unfit to safely operate a motor vehicle on public streets and highways in that Defendant JOHN DAMIAN RODRIGUEZ was reckless and/or negligent. Defendant UNITED STATES POSTAL SERVICE knew, or in the exercise of due care, should have known, that Defendant JOHN DAMIAN RODRIGUEZ was an incompetent driver and would create an unreasonable risk of danger to persons or property on public streets and highways in Texas.

RESPONDEAT SUPERIOR – DEFENDANT UNITED STATES POSTAL SERVICE

Defendant UNITED STATES POSTAL SERVICE is liable under the legal doctrine of *Respondeat Superior*. Defendant JOHN DAMIAN RODRIGUEZ was an acting agent, representative, and/or employee of Defendant UNITED STATES POSTAL SERVICE. Thus, Defendant UNITED STATES POSTAL SERVICE, is vicariously liable for all of Plaintiff's damages arising from the Collision, under the legal doctrine of *Respondeat Superior*.

VI.
DAMAGES

Plaintiff incorporates the previous paragraphs by reference as though fully set forth in their entirety. Plaintiff incurred the following actual damages for which they seek recovery:

- a. Medical Expenses: Plaintiff incurred bodily injuries which were caused by the Collision. Plaintiff incurred medical expenses in the past and will incur medical expenses in the future.
- b. Physical Pain: Plaintiff endured severe and constant physical pain in the past and will endure pain in the future.
- c. Mental Anguish: Plaintiff endured mental anguish in the past and will endure mental anguish in the future.
- d. Physical Impairment: Plaintiff endured physical impairment in the past and will endure physical impairment in the future.

JOINT AND SEVERAL LIABILITY

Plaintiff will show that the negligent and/or gross negligent acts of the respective Defendants together and/or with the acts or omissions of any alleged third parties to produce one, indivisible injury to Plaintiff. Pursuant to Chapter 33.015(b) of the Texas Civil Practice and Remedies, Plaintiff pleads that any Defendant found to be more than 50% responsible is jointly and severally liable for the entire amount of Plaintiff's damages.

VII.
REQUIRED DISCLOSURES

Under Texas Rule of Civil Procedure 194, Defendant is required to disclose, within 30 days of Defendant's First Answer, the information or material described in Rule 194.2.

VIII.
REQUEST FOR RELIEF

Pursuant to Texas Rules of Civil Procedure 193.7, notice is hereby given of the intention to use during the trial of this case any of the documents exchanged in this case. Plaintiff requests that Defendant be cited to appear that upon final trial, and recover from Defendant judgment for:

- i. Actual damages within the jurisdictional limits of the Court;

- ii. Pre-judgment interest at the maximum rate allowed by law;
- iii. Post-judgment interest at the maximum rate allowed by law;
- iv. Costs of Court; and
- v. Such other and further relief to which Plaintiff may be entitled at law or equity.

Respectfully submitted,

FIELDING LAW, PLLC

/s/ Clayton Parry
MICHAEL S. FIELDING
State Bar No. 24065226
CLAYTON PARRY
State Bar No. 24091417
18601 Lyndon B. Johnson Freeway
Town East Tower, Suite 315
Mesquite, Texas 75150
Telephone: 214.666.8625
Fax: 214.279.6439
eservice@fieldinglaw.com
ATTORNEYS FOR PLAINTIFF